IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.317 OF 2007
WITH
APPEAL FROM ORDER NO.318 OF 2007

Shri Jiva Patel & Anr. ...Appellants
Versus
Municipal Corporation of Gr. Bombay
& Ors. ...Respondents

Shri A.Y.Sakhare,Sr.Advocate with Shri Anil Kumar Singh for the Appellants in both the Appeals.
Ms Geeta Joglekar for the Respondent No.1 in both the Appeals.
Shri Holmagi for the Respondent No.2 in both the Appeals.

CORAM : ABHAY S.OKA, J.
DATED : JUNE 14, 2007.

P.C.:

1. Submissions of the learned counsel appearing for the parties were heard yesterday. The Appeal From Order No.317 of 2007 has been preferred by the original Plaintiffs by which they have taken exception to order dated 16th March, 2007 passed by the learned Judge of the City Civil Court by which a notice of motion taken out for temporary injunction has been dismissed. The Appellants-Plaintiffs filed a suit for declaration and injunction as regards notice issued under section 351 of the Mumbai Municipal Corporation Act and consequently an order of demolition passed on the basis of the said notice. The notice of motion taken out by the Appellants has been dismissed and the learned trial Judge has declined to protect the offending structure.

2. The learned senior counsel appearing for the Appellants has taken me through the averments made in the plaint and other relevant documents on record. He submitted that the Appellants have entered the premises in January 1992 as tenants and therefore, the Appellants are not in possession of the documents which will establish that the offending structure has been in existence before the datum line. He submitted that this was a case where the learned trial Judge ought to have granted an opportunity to the Appellants to lead evidence by protecting the structures till the final disposal of the suits. He submitted that the entire action has been initiated at the instance of the second Respondent who is the landlord. He submitted that the learned trial Judge committed an error by relying upon a judgment of this Court which related to adjoining premises.

3. The learned Advocates appearing for the Respondents have supported the impugned judgment and order by pointing out findings recorded by the learned trial Judge.

4. I have considered the submissions. The notice relates to unauthorised extension of the original existing structures. The Appellants could not produce

any prima facie material to show that the offending structure was in existence before the datum line. The learned trial Judge has referred to photographs of the suit structure which were not disputed by any of the parties which show that the offending structure is outside the building line. The learned Judge noted from the photographs that there was a common wall between the offending structure and the structure of M/s. Om Dyers & Dry Cleaner in respect of which this Court has already passed an order holding that the same is unauthorised.

5. The learned Judge has referred to the sanctioned plan of the building which was placed on record. The said sanctioned plan shows that the offending structure is situated in the open space shown on the sanctioned plan.

6. Prima facie, there is no evidence on record to show that the offending structure existed before the datum line. This is a case where even the Appellants have not come out with the case that offending structure has been constructed with the permission of the Municipal Corporation. In view of this position, the learned trial Judge was justified in declining to grant equitable and discretionary relief of temporary injunction for protecting the suit structure.

7. In so far as Appeal From Order No.318 of 2007 is concerned, it is not in dispute between the parties that the facts of the case in the said Appeal are similar to the facts of the case in Appeal From Order No.317 of 2007. Therefore, there is no merit in both the Appeals and the same are accordingly dismissed.

8. Before parting with this judgment, I must refer to the manner in which a compilation has been filed by the second Respondent. The Appeal compilation of Appeal From Order runs into 344 pages. The second Respondent has filed an affidavit in reply to the Appeal. The annexures to the affidavit in reply run into more than 500 pages. There is no provision either in the Code of Civil Procedure, 1908 or in the Appellate Side Rules under which an Affidavit in reply could have been filed to an Appeal. The bulky reply filed by the second Respondent is not to the Civil Application for interim relief but it is by way of a reply to the Appeal. Perusal of the documents annexed to the affidavit in reply which runs into about 500 pages shows that large number of documents in the said reply already form part of the Appeal compilation. Some of the documents in the compilation are not at all relevant. Such practice of filing reply in Appeal without seeking permission of this Court has to be deprecated. Infact, the office ought not to have accepted the affidavit in reply to the

memorandum of appeal without there being a specific order of the Court permitting the Respondent to file a reply to the Appeal. As the position stands today, there is no sufficient space available in the office of this Court for storing the files and large number of files were required to be shifted to the building of the Small Causes Court at Mumbai. The second Respondent could not have filed such a bulky compilation running into 500 pages containing many documents which were already part of the Appeal compilation.

9. The Registrar (Judicial I) will give instructions to the office not to accept reply filed by a Respondent to an Appeal From Order unless there is a permission granted by the Court. However, a reply to the Civil Application for interim relief can be accepted.

10. Such conduct of the second Respondent has to be deprecated. It is expected that the second Respondent will help the cause of the legal aid and will pay a donation of Rs.5,000/- to the Maharashtra State Legal Services Authority within a period of four weeks from today.

11. Appeals From Order are accordingly dismissed. No orders as to costs.

12. At this stage the learned counsel appearing for the Appellants seeks continuation of ad-interim relief which was granted on 13th April, 2007. The said request is opposed by the Advocates appearing for the Respondents. There is ad-interim relief operating in favour of the Appellants for considerably long time. Considering the large number of orders passed by this Court, it may not be possible to make available a copy of this Judgment within a reasonable time. Considering this aspect, both the parties will maintain status-quo as of today in all respect in respect of the suit structure for a period of six weeks from today.

JUDGE